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I. CHRONOLOGICAL LIST OF IMPORTANT DOCKET ENTRIES

1966

- May 24. Information filed in Oakland County Circuit Court.
- Oct. 6. Motion to quash information is denied.
- Oct. 18. Jury impaneled and sworn; proofs heard in part.
- Oct. 19. Proofs continued and heard in part.
- Oct. 20. Proofs continued and heard in part.
- Oct. 21. Verdict of guilty of rape returned by jury.
- Nov. 9. Defendant sentenced to from 20 to 40 years in State Prison For Southern Michigan.

1969

- Oct. 1. Defendant's conviction affirmed by the Michigan Court of Appeals.

1971

- Aug. 27. Defendant's conviction affirmed by the Supreme Court of the State of Michigan.

1972

- Dec. 22. Defendant's Petition For A Writ of *Habeas Corpus* granted by the United States District Court, Eastern District of Michigan.

1973

- June 21. United States District Court's grant of writ of *habeas corpus* to defendant is affirmed by the United States Court of Appeals, Sixth Circuit.

- Sept. 14. Petition for a writ of *certiorari* is filed by plaintiff in the United States Supreme Court.
- Dec. 3. United States Supreme Court grants plaintiff's petition for a writ of *certiorari* to the United States Court of Appeals, Sixth Circuit.

II. REFERENCE TO OPINIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit was filed on June 21, 1973. The decision of the United States District Court, Eastern District of Michigan, Southern Division, was filed on December 22, 1972 and is reported at 352 F Supp 266 (E. D. Mich, 1972). The opinion of the Supreme Court of the State of Michigan was filed on August 27, 1971, and is reported at 385 Mich 594; 189 NW2d 290 (1971). The opinion of the Michigan Court of Appeals was filed on October 1, 1969, and is reported at 19 Mich App 320, 172 NW2d 712 (1969). Copies of each of the opinions cited above were included in the Appendix to the printed Petition For A Writ of Certiorari. Therefore, in accordance with the procedure of this Court, those opinions are not included in this Appendix. The opinions of the lower courts may be found at pages 13-39 of the Appendix to the Petition For A Writ of Certiorari.

III. TRANSCRIPT OF THE PRELIMINARY EXAMINATION, MAY 13, 1966, PAGES 93-100

(93) Mr. Dinan: People call Detective Anderson to the stand please.

ALPHONSE ANDERSON, a witness for and in behalf of the People of the State of Michigan, having first been duly sworn by the Honorable R. Grant Graham, Justice of the Peace for the Township of Pontiac, testified as follows:

Direct Examination

By Mr. Dinan:

Q. Give the Court your name and occupation please?

A. Alphonse Anderson, Detective with the Oakland County Sheriff's Department.

Q. How long have you been a detective, Mr. Anderson?

A. Approximately nine years.

Q. Now, I'm going to direct your attention to the date of April 19, 1966, and ask you if any time during the course of that day you investigated an alleged criminal assault?

A. Yes, I did.

Q. What did—what did you do by way of investigation of the matter, if anything?

A. The night, April 19th approximately at 9:00 o'clock I received a call at home that a subject by the name of Thomas Wayne Tucker had been picked up.

Q. I see. What did you do, if anything?

A. Immediately left home for Pontiac.

Q. Did you see Mr. Tucker as you arrived at the Sheriff's Office?

A. Yes, I did.

Q. I see. And did you apprise Mr. Tucker of what he was being detained for?

(94) A. Yes, I did. He seemed to understand that he—what he was arrested for.

Q. Regardless of whether he understood or not, did you inform him of what he was arrested for?

A. Yes, I did.

Q. Now, did you interrogate Mr. Tucker at all?

A. Not at that time, but we later did.

Q. I see. Did you at the time you first saw Mr. Tucker, did you inform him after he was advised of what he was arrested for, did you inform him of any Constitutional rights he might have?

A. Yes, I did.

Q. And in particular, what did you tell him relative to these Constitutional rights?

A. He was sitting in the office directly across from the booking office, that's our main office at the Oakland County Jail.

Q. Yes.

A. And I went into the office there, was approximately, I'd say about 9:30 and talked to him a short time and he knew me and I knew him so we had a conversation and I informed him that he was—what he was locked up for—and advised him that if he had wanted an attorney he could have an attorney or he could—didn't have to say—in other words, his Constitutional rights.

Q. You told him he had a right to have an attorney with him there, correct?

(95) A. Right. He said at that time he said he didn't know whether he needed an attorney.

Q. Um-hum. Did you tell him he had a right—

Mr. Moore: Object to this your Honor. The officer can testify what he told him as far as his Constitutional rights are concerned and not have leading questions.

The Court: Objection sustained.

Q. (By Mr. Dinan): I'll reiterate my question, Detective. In particular, what, if any, Constitutional rights other than what you have testified to, he had a right to counsel, what else did you tell him ~~relative to his rights~~ at that time?

A. That he didn't have to say anything and—

Q. Anything else?

A. Also I just don't recall right at that time exactly the words I did use.

Q. Any mention made of using evidence against him if he did make any statement?

A. Well, he emphasized he understood all this.

Q. Did you tell it to him? I don't want to know if he understood, I want to know if you told it to him.

A. Yes, I believe I did.

Q. Was anyone else present in the—

A. No one else present.

Q. —in the room. I see. And you say you have been a detective nine years, is that correct?

(96) A. Yes, I have.

Q. And in the course of this activity as a detective, have you interrogated many suspects of crimes, is that correct?

A. Yes, I have.

Q. And in view of your procedures and interrogations, are you aware of the rights that a defendant has upon arrest?

A. Yes, I do.

Q. And do you make it a practice to admonish, as it were, or explain to the defendants his Constitutional rights as a matter of routine procedure?

Mr. Moore: Not material. Objection, your Honor. The only thing material in the question of Constitutional rights is what he did in this case.

Mr. Dinan: If your Honor please, I'm establishing this witness is a police officer who, as one of his basic functions is interrogation, that he performs the duties as a routine, and by so establishing, I would want to prove for the Court's determination this was exactly what happened in the case.

The Court: I'll let him answer what his procedure is routinely.

Q. (By Mr. Dinan): Would you answer the question, please?

A. Well, as I say, we always do, after an arrest, before we start to interrogate, always advise them of their Constitutional (97) rights, that they didn't have to make any kind of statement that they could have an attorney if they wished one and also advised that if he did make a statement it could be used at a later date in court.

Mr. Dinan: All right, fine. No further questions.

Cross Examination

By Mr. Moore:

Q. Now, Officer, what is customary of your procedure, don't tell us. Let's get down to the 19th of April, 1966. You and Mr. Tucker are in the room across the hall from the interrogation room at the Oakland County Sheriff's Department or from the booking room, excuse me. Do you remember that specific occasion, the exact language you used when you advised Mr. Tucker of his Constitutional rights?

A. Well, at the time I believe I asked him if he knew what he was arrested for, he stated yes and then I proceeded to ask him whether he wanted an attorney or not, also if he understood his Constitutional rights and—

Q. Now, am I correct, Officer, you had seen Mr. Tucker before?

A. Yes, I had a number of times.

Q. This would be in your duties as a police officer?

A. (Nods head yes.)

Q. Am I correct you, as a police officer, having seen Mr. Tucker before, might very well assume he might know what his Constitutional rights were, probably had been apprised of them before?

A. He has been advised of them at other times.

(98) Q. You assumed he knew what his rights were, correct, because you had dealing with him before, isn't that right?

A. Well, we discussed that point that he knew that he understood it, he understood his rights but I also advised him of his rights at the time.

Q. I think you stated that you asked him if he knew of his Constitutional rights, is that right?

A. Yes, I did.

Q. What was his answer?

A. He said yes.

Q. All right. Now, did you have any other conversation other than asking him if he knew what he was arrested for and if he knew what his Constitutional rights were, did you have any other conversation with him concerning what his Constitutional rights were?

Mr. Dinan: I want to object, your Honor. Counsel has asked the question already and it's been answered by the witness. He explained to the man even though he knew the man was familiar with police procedure. He even testified on cross-examination and on direct in spite of this

he still went to the explicit pains to inform him of exactly what his Constitutional rights were and I think Counsel is being very repetitious in asking the question over. (99) I would ask the Court to censure—

The Court: I believe he answered the question. Let's have the court reporter—the question was: "What was the exact language you used this specific occasion to advise Mr. Tucker of his Constitutional rights when he was in—you originally used the interrogation room across from the booking room inside the Oakland County Sheriff's Department?" If she can find the question I'd like to have the answer read back.

(Record read.)

Q. (By Mr. Moore): Am I correct, Officer, then, that you asked him if he knew what he was arrested for and he said yes and you asked did he want an attorney and he said no, and you asked did he know his Constitutional rights and he said yes?

A. He said yes.

Q. Do you recall those specific questions and those answers?

A. Yes.

Q. All right. Did you have any other conversation with him concerning his Constitutional rights other than these three questions?

A. Yes.

Q. All right, what was that?

A. Also explained to him whatever he said, any statements he made, (100) could be used against him further, at a further date in court.

Q. Do you specifically remember telling Mr. Tucker that this particular occasion in that particular room?

A. Yes, I do.

Q. That anything he said could be used against him in court?

A. That's right.

Q. That what you told him?

A. (Nods head yes.)

Q. Anything else?

A. I don't recall off-hand.

Q. You don't recall anything else, is that correct?

A. No, I don't.

Mr. Moore: I have nothing further, your Honor.

The Court: Any further questions?

Mr. Dinan: No further questions, your Honor.

The Court: Step down.

Mr. Dinan: Step down. People at this time would rest, your Honor and move to bind.

The Court: Counsel, you have any statement?

Mr. Moore: I'm presuming you're not moving to admit that picture?

Mr. Dinan: No, I won't.

Mr. Moore: In response, your Honor, we would request that the Prosecution's motion be denied. The only evidence we have before the Court first of all that • • •

IV. TRANSCRIPT OF PRE-TRIAL MOTIONS,
OCTOBER 6, 1966, PAGES 35-41.

* * * * *

The Court: I was going to suggest he probably ought to. But you have another motion to suppress evidence, do you not? I see one in the file. Unless it's been ruled on by another judge.

Mr. Vanderkloot: Your Honor, I have—

The Court: Concerning a Robert Henderson.

Mr. Vanderkloot: Yes, your Honor, they're similarly titled. I was not very inventive as to titles, it seems. That relates to the testimony of Robert Henderson.

The Court: Yes, proceed to that one, please.

Mr. Vanderkloot: Well, your Honor, I reviewed the language in the Wong Sun against the United States, I refer the Court's attention, and I see the Court has not only kindly looked at it, but placed it in a place of honor before the Bar.

The Court: Did you want it to refer to now?

Mr. Vanderkloot: I don't need to, your Honor, I know the Court has looked at it, and the proposition I'm advancing here is once we establish that a statement taken, (36) statement attempted to be taken is taken contrary to the requirements of the constitution of the United States and of the State of Michigan, the information obtained thereby is inadmissible.

The Court: Do you need this case to refer to?

Mr. Vanderkloot: I do not, your Honor. The case that I do refer to is the case of People vs. Fordyce, that's—it's September 15, 1966, volume 378, No. 3. People against Fordyce, your Honor, adopts the opinion of the United States Supreme Court in Miranda versus Arizona, 384 U.S.—

The Court: That's the one that set the date?

Mr. Vanderkloot: Yes, and it also adopts the case of Johnson versus New Jersey, 384 U.S. 719. Reading from page 211 of 378 Michigan, the Court says:

"On June 20, 1966, the Supreme Court of the United States, in the case of Johnson vs. New Jersey—" I'll omit the citation—"held that the guidelines set forth in Miranda are available only to persons whose trials had not begun as of June 13, 1966."

That means that what Miranda says applies to any trial held after June 13, 1966. What Miranda says, is as follows:

"When an individual is taken into custody or otherwise (37) deprived of his freedom by the authorities and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warn-

ings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

(38) Now, it's clear in this case that two of the things required here were not done, with due respect to Detective Anderson, I have my doubts as to the effectiveness of the other. Not because there's anything wrong with this man, he's a good friend of mine, but he has so darn many cases to do all the time, I think it's difficult for any man to remember everything to do all the time. And as defense counsel, I spend many hours giving free lectures to policemen on procedural matters to follow in the law of arrests. That's my little contribution to this problem. But on this side of the fence, I'm sitting now, the law has been laid out. And the thing I think is good about it, there isn't any question what you're supposed to do from now on.

The Court: No question, Miranda had something to do concerning a statement of an individual who is going to testify.

Mr. Vanderkloot: I can't argue about that, your Honor, it does say "no evidence."

The Court: It's dicta, is it not, at the very most?

Mr. Vanderkloot: I can't quarrel with that, you Honor.

The Court: I understand your problem. The problem is that you claim through information gotten from the (39) defendant, they then approached this man, Henderson. Henderson will be a witness who will testify, is that correct?

Mr. Vanderkloot: That's right, your Honor.

The Court: Because they got the information from the defendant, therefore he cannot testify, under the Miranda case?

Mr. Vanderkloot: That's correct, your Honor. I do want to see Wong Sun once again, see what the statement is that we're talking about. Here is a statements, and I guess you would call an esculatory statement, the respondent says, "Well, I can explain—"

The Court: Now, to your knowledge, is there any plan to use what—the statement of this defendant in this trial, the one you're referring to?

Mr. Vanderkloot: This, I don't know.

The Court: Is there, Mr. Roberts, any intention to use the statement of the defendant which led to Henderson in this trial, or are you going to use Henderson?

Mr. Roberts: Let me put it this way, if the Court please, rather than giving a direct answer, we would be happy to abide by the Court's decision.

The Court: It seems to me -why would (40) you need it in the first place?

Mr. Roberts: I beg your pardon?

The Court: Why would you need his paragraph two "It's believed the identity of Robert Henderson was learned through interrogation of the defendant."

Mr. Roberts: Uh-huh.

The Court: Do you intend to use that, the statement of the defendant, to the officers, which lead to the identity of Henderson?

Mr. Roberts: To be very frank, I think we had, yes. But on the other hand, we need not.

The Court: It seems to me that may very well be inadmissible. But it would be my opinion that the—I'm familiar with the Miranda case, I've read it many, many times. And I do not feel that the Miranda case would apply to the testimony of Henderson himself.

Mr. Roberts: Very well.

The Court: That would be my ruling.

Mr. Vanderkloot: I just wanted to—

The Court: I'm sorry—I've read Wong Sun.

Mr. Vanderkloot: "The government also contends that Toy's declarations should be admissible because they (41) were ostensibly exculpatory, rather than incriminating."

The Court: That's Toy's declaration.

Mr. Vanderkloot: But they led to the evidence which implicated Toy.

The Court: That was physical evidence, not evidence which would be produced under oath in court.

Mr. Vanderkloot: That's correct.

The Court: It would be my ruling that your motion to suppress for the reasons which I've already stated, is not well founded, and the motion to suppress the evidence concerning the testimony of Robert Henderson is denied.

That leaves one motion and that's the first one that you started arguing and that's the motion to suppress the evidence found on the defendant. And, Mr. Roberts, I believe, intends to put the officer on the stand. Is that correct?

Mr. Roberts: Yes, your Honor.

The Court: Is he here?

Mr. Vanderkloot: There were two grounds, one was the arrest, the other was the long confinement before arraignment.

The Court: All right.

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V. TRANSCRIPT OF TRIAL, OCTOBER 18, 19, 20, 21,
1966, PAGES 216-236

(216) A. I knew at that time it was the man I was looking for.

Q. Why did you know that?

A. On account of the report I received when I called the Oakland County Sheriff's Department.

Q. So when you got the ID card, you knew it was the man you were looking for?

A. Yes, sir.

Q. Not until then?

A. No, sir.

Mr. Vanderkloot: No further questions.

ROBERT HENDERSON, a witness for and in behalf of the people of the State of Michigan, being first duly sworn, testified as follows:

Direct Examination

Conducted by Mr. Roberts:

Q. Your full name, witness?

A. Robert T. Henderson.

(217) Q. Where do you live, Mr. Henderson?

A. 590 Upland, Pontiac,

Q. Upland?

A. Right.

Q. That is in the City of Pontiac?

A. Yes, sir.

Q. Are you employed?

A. Yes. I am laid off right now.

Q. Where were you employed?

A. Fredman's Construction.

Q. You have been laid off since when?

A. October 6. Whenever the carpenters went on strike there.

Q. This year?

A. Yes.

Q. Are you a carpenter by trade?

A. No.

Q. Helper?

A. Laborer.

Q. Mr. Henderson, directing your attention to the 19th day of April of this year, did you see the Defendant, Mr. Tucker?

A. Yes.

Q. Where, sir?

A. At the house where I was staying.

(218) Q. Approximately what time?

A. Around one o'clock.

Q. One o'clock, morning or afternoon?

A. Afternoon.

Q. Then it was daylight?

A. Right.

Q. And who was there with you at the time?

A. Jean Madsen and two of her kids.

Q. Their names and ages?

A. Rickie Madsen is five and Dawn Madsen, three.

Q. What were you doing at the time that Mr. Tucker arrived?

A. Cleaning a goose.

Q. Are you a hunter?

A. Yes.

Q. Had this been the result of your endeavors or someone gave it to you?

A. No, I shot it.

Q. And did you make any observations of Mr. Tucker at the time of his arrival?

A. No, I didn't. The little boy Rickie did.

Q. Where was Rickie at the time?

A. He was standing there watching.

Q. Standing near you?

(219) A. Yes.

Q. Watching you?

A. Clean the goose.

Q. And where was Rickie—strike that. Rickie was nearest to you?

A. No. He was standing right there.

Q. How far from you was Mr. Tucker?

A. Just across from some newspaper I had laid on the floor.

Q. And you were talking—we are talking about at the most what distance?

A. Three feet.

Q. And what, if anything, did Rickie say?

A. He asked what happened to Wayne's face there.

Mr. Vanderkloot: Objection to what he said. It's hearsay.

The Court: The objection is sound.

Mr. Roberts: May I indicate to the Court that the witness has testified that he was cleaning the goose, that Rickie was standing right next to him, that there were three feet separating Rickie from the Defendant.

A. No, there was three feet between me and—

The Court: The objection is what Rickie may have said is hearsay.

Mr. Robert: I am asking the Court (220) for a ruling when it is stated in the presence of the Defendant.

The Court: I think I will excuse the Jury for a moment. The Jury may be excused to the Jury Room.

(At this time the Jury left the courtroom.)

In the absence of the Jury

The Court: Let the record indicate the Jury is now absent. What exception do you claim to the hearsay rule?

Mr. Roberts: I am claiming, if the Court please, that remarks made by a third party, said in the presence of the Defendant is an exception to the hearsay rule.

Mr. Vanderkloot: I haven't seen indications that it was directed to him. Therefore, I respectfully maintain my objection.

The Court: You may proceed on a Separate Record.

Separate Record

(221) Examination Conducted by Mr. Roberts:

Q. You say at the most three feet separated you from the Defendant?

Mr. Vanderkloot: Objection. It's leading.

The Court: We are on a Separate Record.

Q. I asked you what was the furthest distance that separated you from Mr. Tucker. You said "three feet".

A. Yes sir.

Q. What was the maximum of distance between you and, between you and Rickie at the time three feet separated you from Mr. Tucker? What was the maximum distance that existed between you and Rickie?

A. Tucker was across from me and Rickie would be here.

Q. How far would Rickie be from you at the most?

A. Foot and a half.

Q. And how far was Rickie from Mr. Tucker?

A. Foot and a half.

Q. So you were all right there within a small area, and the maximum distance that separated you from Mr. Tucker

is three feet. The maximum distance that separated you from Rickie is the same which separated Rickie from the Defendant, which (222) is a foot and a half?

A. Right.

Mr. Roberts: If the Court please, I am submitting to the Court that remarks made by any one of the three, especially by Rickie, it's a declaration of a third party, but it's an exception to the hearsay rule, having been made in the presence of the Defendant.

The Court: I agree with you, but when you seek to use "Rickie" then you approach the line.

Mr. Vanderkloot: I maintain my position.

The Court: If you insist on asking the question, I think there should be research before it is asked in the presence of the Jury.

Mr. Roberts: Very well.

The Court: The Court will be in recess.

Recess

In the presence of the Jury

The Court: I believe you asked a (223) question.

Mr. Roberts: Yes, your Honor. I will withdraw the question.

Examination continued by Mr. Roberts:

Q. Mr. Henderson, you say that you and the Defendant and Rickie were together while you were cleaning the goose, is that correct?

A. Right.

Q. And at this point, at this time, did you have any conversation with the Defendant or he with you?

A. Yes, while we was cleaning, while we was cleaning the goose.

Q. Will you tell us what you said, if anything, and what he said while you were cleaning the goose?

A. I asked him about his face there, asked him if he got hold of a wild one or something.

Q. Was there any response to this inquiry by you in behalf of Mr. Tucker?

A. He said "something like that".

Q. Was there anything further stated by you at this time?

A. No, not at the moment.

Q. Anything further stated by Mr. Tucker at this time?

(224) A. No.

Q. Then what did you do? What did you do after this conversation had passed?

A. I waited a little bit there.

Q. Just one moment. You are going to have to talk up so these last two people here can hear you, this young lady and this gentlemen here.

A. I waited for a few minutes and I asked him something else.

Q. What did you ask him?

A. I asked him who it was.

Q. Did you get a response to that?

A. Yes.

Q. What did he say, please?

A. He said some woman lived the next block over, and he said, "She is a widow woman," or something like that.

Q. Anything further stated at this time?

A. No.

Q. Any description of the woman given?

A. No, he just said about in her thirties or something.

Mr. Vanderkloot: Object. The question is leading.

The Court: I don't think that question is leading. You may have an answer.

(225) A. He said she was in her thirties or something like that.

Q. And how long did it take you to clean the goose?

A. Not too long. Well, I tried picking it, but I couldn't, so I skinned it out.

Q. Beg pardon?

A. I tried picking it, but it was too hard, so I skinned it out.

Q. What do you mean by "skinned it off"?

A. Instead of plucking it, I just took the skin off.

Q. How long did this take, if you know?

A. Twenty minutes.

Q. How long was it after Mr. Tucker arrived that he left your place?

A. Eight o'clock that night.

Q. How did he get to your home?

A. Drove his car.

Q. What kind of car did he drive?

A. '59 Ford.

Q. Color?

A. Red.

Mr. Roberts: You may Cross Examine, Counsel.

(226). *Cross Examination*

Conducted by Mr. Vanderkloot:

Q. Mr. Henderson, have you ever been arrested and convicted of a crime?

A. Yes.

Q. And when was that?

A. '57.

Q. Any other occasion?

A. '60.

Q. Went to Ionia?

A. Right.

Q. So you have had occasion to know Detective Anderson?

A. I don't remember if I met him down there or not at the Station.

Q. Did you have to talk to some of these Officers?

A. Pardon me?

Q. Did you talk to some Officers in the Sheriff's Department?

Mr. Roberts: When, if the Court please. He has asked if he was arrested. He said '57 and '60, and now he wants to talk with the Officers.

The Court: In relation to what matter?

(227) Mr. Vanderkloot: In relation to this matter, the matter before the Court right now.

The Court: You may answer.

Q. Did you have occasion to talk to the Officers of the Sheriff's Department?

A. In what way that you mean?

Q. About this particular matter?

A. Sure, when they come out to the house there to subpoena me and that.

Q. How about before they subpoenaed you?

A. Yes, I had to go down to the Police Station.

Q. And who did you talk with there?

A. Fredericks and Anderson.

Q. Did you see Detective Anderson here today?

A. Yes.

Q. Where is he?

A. There.

Q. Indicating Detective Anderson. Do I understand from looking at the preliminary examination, page eighty-five, Counsel, that you saw the Defendant that evening, the evening previous to the incident you described on Direct Examination?

A. Yes.

Q. Do you remember you were asked this question: "It was about (228) ten o'clock when you left? Answer—Between ten and ten thirty, somewhere in there." Do you recall that answer, that question and answer?

A. Yes.

Q. Were you asked this question: "I see. Can you describe, if you can, what Mr. Tucker was wearing on that occasion? Answer—He had tan pants on, I think. Question—Um-hum. Answer—I am not positive of it though." Do you recall having that set of questions and answers?

A. Right.

Q. "Question—Anything else remarkable about his dress? Answer—He had a light shirt on or a pink shirt, I forget." Do you remember giving that answer to that question?

A. Right.

Mr. Roberts: If the Court please, can we have a clarification as to what date this testimony referred to? It's in the transcript.

The Court: The Jury is entitled to know.

Mr. Vanderkloot: Yes.

Q. This would be the evening of the 18th?

A. Right.

Mr. Vanderkloot: That's all.

(229) Q. The time you saw Mr. Tucker, in the conversation while you were cleaning the goose, that was the next day?

A. Yes.

Q. What time of day was it, did you say?

A. One o'clock.

Q. The last you saw him was between ten and ten-thirty the previous evening?

A. Right. Yes.

Q. Now you mentioned, a young boy, Rickie, did you not?

A. Yes.

Q. Do you recall in the preliminary examination, page ninety, Counsel, being asked this question: "Now there was a young boy around there. Who was that? Answer—

Rickie. Question—Who? Answer—Rickie. Question—Any relation to you? Answer—No. Question—Friend? Answer—Yeh. Question—Live with you in the same house? Answer—I'd rather not say." Were you asked those questions and did you make those answers?

A. Right.

Q. Question "Do you know whose son he is? Answer—Yeh. Question—Whose son is he? Answer—I'd rather not say that too." Do you recall those answers?

A. Yes.

Q. Actually also in the preliminary examination you said that (230) Mr. Tucker was supposed to have said that he had something to do with a widow or divorcee?

A. Right.

Q. Which type of person were you living with? Were you living with a widow or divorcee?

A. I give my address as 590 Upland.

Q. Who were you living with, a widow or divorcee?

A. My mother.

Q. That is, who is Rickie's parent?

A. What do you mean?

Q. Who is this woman that you'd rather not say?

A. A friend of mine.

Q. A friend of yours that was on ADC?

A. Could be.

Q. Wasn't that a fact?

A. I don't know her business.

Q. As a matter of fact, weren't you afraid that this ADC would be lost if this testimony came out?

A. No, I am not afraid of it.

Q. You mean it has?

A. Because I didn't know she was on ADC.

Q. Why were you afraid to tell the Court who that was?

A. I'd just rather not get her involved in it.

(231) Q. Because you were carrying on an illicit relationship with her, weren't you?

A. What do you mean?

Q. I mean you were carrying on an extra-marital relationship with her, were you not?

A. Because I went over and seen her or something?

Mr. Roberts: If the Court please, I know this is Cross Examination. I fail to see that this is material with the case that we have today. He has been interrogated with whom he was living with and whether or not this party may or may not have been receiving subsidies from ADC and I think it's totally irrelevant with the case with which we are concerned.

Mr. Vanderkloot: There is nothing about this name that should hurt unless there is something he is hiding about this relationship.

The Court: The question as you asked it would require that the witness be advised of his Constitutional Rights when you ask whether he is carrying on an illicit affair.

Q. I will advise you any statement you make in the presence of this Jury and before the Court, if it tends to incriminate you, you need not make such an answer because such an answer might (232) be used against you in a court of law in order to convict you of a crime. However, the Court can instruct me here if I am mistaken, and I really wonder, your Honor, if I mis-state something, please correct me.

The Court: The witness should know he is not required to testify as to any matter which might tend to incriminate him. You may answer the question or indicate your Constitutional protection.

(Last question read by reporter.)

The Court: Do you wish to answer or not?

A. No, I wasn't.

Q. Weren't you in fact having intercourse with this woman?

A. No, I wasn't.

Q. Didn't you plan to marry her although you already had a wife?

A. No.

Q. You deny these things?

A. Yes.

Q. That's why you were afraid to mention her name?

A. I am not afraid to mention her name. I don't need to mention her name now.

(233) Q. The Officers had occasion to talk to you before the preliminary examination about your testimony?

A. Repeat that.

Q. Did the Officers on this case have occasion to talk to you before this preliminary examination about your testimony?

A. They just asked me what happened. That was it.

Q. In fact, weren't you asked about some other matters that you have been involved in?

A. If what?

Q. Weren't you asked about some other matters that you were involved in?

A. No.

Q. In fact weren't you told that you would be prosecuted if you didn't testify?

A. They ain't going to prosecute me for nothing.

Q. Have you ever been caught by a wild one?

A. Pardon me?

Q. Have you ever been caught with a wild one?

Mr. Roberts: I object, your Honor. It's totally irrelevant. It has nothing to do with this case.

Q. Do you normally indulge in this kind of conversation in front of five-year-old-children?

A. No, but I think a five-year—

(234) Q. But you thought that was a good time to do it, is that it?

A. Yeah. I thought about it and I asked it.

Mr. Vanderkloot: Fine. Thank you very much.

Re-direct Examination

Conducted by Mr. Roberts:

Q. You were asked on Cross Examination whether or not you had ever talked to any Police Officers, right?

A. Right.

Q. You are under oath. First of all, let me ask you this: how long have you known the Defendant?

Mr. Vanderkloot: Your Honor, may we approach the Bench?

The Court: Yes.

Mr. Roberts: I will withdraw the question.

Q. Is the Defendant a friend of yours? Just "yes" or "no".

A. Yes.

(235) Q. And has been for some time? Just "yes" or "no"?

Mr. Vanderkloot: The Prosecutor is leading his own witness.

Mr. Roberts: I will withdraw the question.

Q. Has he been a friend for more than ten years? Yes or no?

A. Yes.

Q. Now you were asked on Cross Examination whether or not you had been questioned by Police Officers, right?

A. Yes.

Q. And you are under oath here, sworn to tell the truth, right?

A. Yes.

Q. Did any Police Officer, and I want you to tell the Ladies and Gentlemen of this Jury and the Court, ever advise you to lie?

A. No.

Mr. Vanderkloot: Object. That is leading. That is attempting again to bolster the credibility of his res gestae witness. I agree it's weak, your Honor, but the question is leading and it is suggestive and it allows the Prosecutor to testify for the witness.

The Court: The question was somewhat leading. However, the answer has been given and it may stand, but do avoid leading questions.

(236) Mr. Roberts: Yes, sir. I have no further questions.

The Court: Mr. Roberts, will your next witness take some time?

Mr. Roberts: It might take longer than the seven minutes we have left.

The Court: Court will be adjourned until nine o'clock
(Court adjourned.)

**VI. STIPULATION OF OPPOSING COUNSEL,
JULY 14, 1967**

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND**

People of the State of Michigan,	}	No. CR 2087
Plaintiff,		
vs		
Thomas Wayne Tucker,		
Defendant.		

STIPULATION

It is hereby stipulated and agreed by Defendant and the People that the identity and location of Robert Henderson, witness for the People in this cause and his connection with this matter was learned only through the interrogation of Defendant and that prior to learning the identity of Robert Henderson and as part of that interrogation, Defendant was advised by the police officers only as indicated from pages 97 through 100 of the Preliminary Examination dated May 13, 1966.

Agreed as to form and substance:

/s/ Dennis Donohue

Assistant Prosecuting Attorney
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/s/ William R. Vanderkloot

Attorney for Defendant
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Birmingham, Michigan 48011

Dated: July 14, 1967

647-7232

Supreme Court of the United States

No. 73-482

Michigan,

Petitioner,

v.

Thomas W. Tucker

ORDER ALLOWING CERTIORARI. Filed December 3 -----, 19 73.

The petition herein for a writ of certiorari to the United States Court of Appeals for the **Sixth -----** Circuit is granted.